Mohd Noraswan bin Abd Rahman v Tan Chin Tye

HIGH COURT (PULAU PINANG) — CIVIL APPEAL NO 12–277 OF 2002
KAMALANATHAN RATNAM J
29 MARCH 2002

Road Traffic *— Negligence — Road accident — Collision between motorcycle and tractor — Defendant abandoned his defence and relied on plaintiff's version — Whether plaintiff had contributed to the accident*

The plaintiff was riding a motorcycle along a road behind a tractor driven by the defendant. The tractor was to the left of the plaintiff's motorcycle. The plaintiff's version was that he had noticed that the tractor was stationary at the centre of the road, intending to turn right. When the plaintiff was about 12ft away, the tractor began to turn to the right slowly and whilst doing so, the hoe at the back of the tractor swerved into the plaintiff's path and thus caused the collision. The defendant's defence was that the plaintiff had attempted to overtake the defendant from the right after the defendant had turned on his indicator light to turn right. During the trial at the sessions court, counsel for the defendant accepted the plaintiff's version of the case and the counsel put to plaintiff that had the plaintiff slowed down instead of attempting to overtake the defendant, the collision would not have happened. The sessions court judge dismissed the plaintiff's claim and the plaintiff appealed.

Held, allowing the appeal:

(1) Whilst having pleaded that the plaintiff was attempting to overtake the tractor from the right when the defendant had given a signal to turn right, the defendant had abandoned this defence and relied on the plaintiff's version without applying to amend his pleadings. On this alone, the defendant must be found liable (see p 418G).

(2) The plaintiff had contributed to the accident to a large extent. The speed at which the plaintiff was riding his motorcycle at the time of collision was excessive, bearing in mind that there was a large vehicle ahead. As such, the plaintiff was liable to the extent of 80% and the defendant 20% (see p 418H).

[Bahasa Malaysia summary

Plaintif sedang menunggang sebuah motosikal di sepanjang jalan di belakang sebuah traktor yang dipandu oleh defendan. Traktor tersebut berada di sebelah kiri motosikal plaintif. Versi plaintif adalah bahawa beliau nampak traktor tersebut berhenti di tengah-tengah jalan, dengan tujuan untuk membelok ke kanan. Ketika plaintif berada pada jarak lebih kurang 12 kaki, traktor tersebut mula membelok dengan perlahan dan ketika melakukan sedemikian, tajak

di belakang traktor tersebut telah memasuki lorong plaintif dan dengan itu telah menyebabkan perlanggaran tersebut. Pembelaan pihak defendan adalah bahawa plaintif telah cuba untuk memotong defendan dari sebelah kanan setelah defendan memasang lampu isyaratnya untuk membelok ke arah kanan. Ketika perbicaraan di mahkamah sesyen, peguam bagi pihak defendan telah menerima versi plaintif dari kes tersebut dan peguam mengemukakan kepada plaintif bahawa sekiranya plaintif telah memperlahankan motosikalnya dari cuba untuk memotong defendan, perlanggaran tersebut mungkin tidak berlaku. Hakim mahkamah sesyen telah menolak tuntutan plaintif dan plaintif telah merayu.

Diputuskan, membenarkan rayuan:

(1) Sementara telah memplidkan bahawa plaintif sedang cuba untuk memotong traktor tersebut dari arah sebelah kanan sedangkan defendan telahpun memberikan isyarat untuk membelok ke kanan, defendan telah meninggalkan pembelaan ini dan bergantung pada versi plaintif tanpa memohon untuk meminta pliding-pliding beliau. Atas perkara ini sahaja, defendan mestilah diputuskan sebagai bertanggungan (lihat ms 418G).

(2) Plaintif telah menyumbang kepada sebahagian besar daripada kemalangan tersebut. Ketika pelanggaran tersebut kelajuan plaintif menunggang motosikalnya adalah di tahap yang keterlaluan, dengan memikirkan adanya sebuah kenderaan yang besar di hadapan. Oleh itu, plaintif bertanggungan sehingga kepada had sebanyak 80% dan defendan pula 20% (lihat ms 418H).]

Notes

For cases on road accident, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 391–420.

Rosli bin Ismail (*Hoon & Rosli*) for the appellant/plaintiff.
P Ramanathan (*VP Nathan & Partners*) for the respondent.

Kamalanathan Ratnam J:

Facts

This is a running down case. The statement of claim of the plaintiff was to the effect that on 14 August 1998 at about 3.40pm, he was riding a motorcycle No PDY 5957 along Jalan Relau when a motor tractor No PBW 3001, driven and owned by the defendant, and which said tractor which was ahead of the plaintiff and proceeding in the same direction and on the left suddenly and without warning or signal turned to the right and across his path thus causing this collision. The plaintiff pleaded various particulars of negligence. Whilst admitting the collision, the defendant pleaded various

plaintiff, the costs of the appeal and directed a refund of the deposit to the appellant.

Appeal allowed.

Reported by Lim Lee Na

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